THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.28120 OF 2005

DATED: 21-04-2006

Between

Karabu Padma and two others. … Petitioners

And

Authorised Officer/Chief Manager,

(CSC & IMAR), State Bank of India,

Warangal, and another. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.28120 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the notice dated 29-11-2005 issued by the 1st respondent purportedly under Section 13 (4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act') as well as the consequential proceedings are arbitrary and illegal.

It is not in dispute that the petitioners herein stood as guarantors for the loan availed by one Karabu Santhosh (husband of the 1st petitioner) from the 2nd respondent Bank and the immoveable properties belonging to the petitioners were mortgaged by deposit of their title deeds. It appears that the principal borrower failed to repay the amounts and consequently the loan account was declared as non-performing account and while invoking the provisions of the Act, notice under Section 13 (2) of the Act was issued on 28-9-2005 calling upon the principal borrower as well as the guarantors to discharge the liability within sixty days, failing which the appropriate steps will be taken against the secured assets. Subsequently, the notice under Section 13 (4) of the Act issued on 29-11-2005 was published in the local daily dated 30-11-2005. The said notice dated 29-11-2005 is under challenge in this writ petition contending inter alia that the respondents failed to follow the procedure prescribed under The Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'the Rules') which require the authorised officer to take possession of the properties and to issue a notice in Appendix-IV to the Rules. The petitioners contend that the procedure as prescribed under the Rules has not been followed and that they are still continuing in possession.

The 2nd respondent Bank filed a counter-affidavit in which the plea of the petitioners that they have been in possession of the property in question as on today has not been disputed. However, it is stated that since the petitioners failed to raise objections if any even after expiry of 60 days from the notice under Section 13 (2) of the Act, the respondents issued impugned notice dated 29-11-2005.

I have heard the learned Counsel for both the parties and perused the material on record.

Rule 8 of The Security Interest (Enforcement) Rules, 2002 provides that where secured asset is an immoveable property the authroised officer shall take

possession by delivering a possession notice prepared in Appendix-IV to the Rules to the borrower and by affixing a possession notice on the outer door of or at such conspicuous place of the property.

In the case on hand, the specific case of the respondents is that such possession notice under Rule 8 (1) of the Rules was already published. A perusal of the said notice dated 29-11-2005 placed before this Court shows that it is not in the form prescribed in Appendix-IV to the Rules as required under Rule 8 (1) of the Rules.

The learned Counsel for the respondent Bank could not justify the impugned notice which was evidently not in the form prescribed under the statutory rules. In the circumstances, I find force in the submission of the learned Counsel for the petitioners that the impugned notice which is not in conformity with the statutory requirements cannot be acted upon.

Accordingly, without expressing any opinion as to the other objections raised by the petitioners, the impugned notice dated 29-11-2005 is set aside leaving it open to the respondents to issue a fresh notice and take appropriate proceedings in accordance with law.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 21-4-2006

GHN